

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Missouri Pacific Lines in Texas and Louisiana, that P. E. Jones as senior available extra employe on Palestine Division should have been assigned to the temporary vacancy in the agency position at Lindale, Texas, under Rule III-(k) instead of junior extra employe T. L. Day who was assigned; and that Jones be paid a full day of eight hours each, at 65c per hour, the schedule rate at Lindale, for September 5, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27 and 28, 1935, (19 days totalling 152 hours at 65c per hour, a total amount of \$98.80) on which days Jones was idle as a result of the assignment of the junior employe and that Jones be also paid the amount of express and Western Union Commissions he would have earned at Lindale on those days."

STATEMENT OF FACTS: In their ex parte submission the General Committee stated the facts as follows:

"Telegrapher P. E. Jones is employed as extra telegrapher on Palestine Division, with roster rating dating from June 1, 1930, and maintains residence at Palestine, Texas.

"Telegrapher T. L. Day is employed as extra telegrapher on Palestine Division, with roster rating dating from October 4, 1930, and maintains residence at Willis, Texas.

"Palestine, Texas, is headquarters for the Palestine Division.

"At 10:30 A. M., August 29, 1935, Day was instructed by telegram by Division trainmaster, to relieve the agent-telegrapher at Lindale, Texas, beginning August 30, 1935.

"At 10:55 A. M., August 29, 1935, Jones was instructed by telegram by Division trainmaster, to relieve the agent-telegrapher at Phelps, Texas, beginning August 30, 1935.

"The agent-telegrapher at Lindale had requested and been granted a leave of absence of two, three or four weeks duration.

"The agent-telegrapher at Phelps had requested and been granted a leave of absence of five days.

"The governing rule of telegraphers' agreement, Rule III-(k), provides:

'Senior extra employes when available and competent will be used in preference to junior extra employes. Senior extra employes will be allowed to displace junior extra employes provided transfer is not involved.'

signed and used in preference to junior employes, by assigning him to the vacancy of the longest duration, that of the agency at Lindale, on which the regularly assigned incumbent was absent August 30th to September 28th, inclusive—a period of twenty-six days; and that, by assigning Jones second and giving preference in the assignment to a junior, resulted in a loss of time to him of 19 days and the amount of commissions he would have earned on express and Western Union business handled at Lindale during the twenty-six-day period of absence of the regular agent."

POSITION OF CARRIER: "In view of the Statement of Facts, it is the contention of the Carrier that Telegraphers Jones and Day were used on the vacancies as they occurred in the order of their seniority and the assignments as made with respect to these two telegraphers were proper.

"It is the contention of the Carrier that the only logical way to fill vacancies is by what is commonly known as the first in, first out rule, or, in other words, by assigning the oldest available extra telegrapher to the first vacancy which becomes effective.

"Reference is made to the date on which the agents at Lindale and Phelps made request on the proper authority for their leaves of absence to become effective. It is the contention of the Carrier that this would have no bearing whatever on the matter of filling these two vacancies. While the Agent at Lindale did request on August 19th a leave of absence to begin August 30th, no action whatever could be taken with respect to granting him this leave of absence or in selecting the proper telegrapher to fill the place until the time arrived for having an employe on hand to fill the vacancy, as the Agent at Lindale, between August 19th and August 30th, might have, for some reason, decided to cancel his request for leave of absence and not lay off at all, therefore, a notice from the Agent at Phelps for a leave on August 30th, was just as sufficient as the notice on August 19th, by the Agent at Lindale for relief on August 30th, however, the Agent at Phelps, in telephone conversation, requested, in order that he might be away from his station at the beginning of the day on August 30th, that relief be furnished the afternoon of August 29th, so that he could transfer the station over to the employe who was to relieve him, therefore, it was necessary to have an employe at Phelps to relieve the Agent at that point on August 29th, while it was only necessary to have an employe at Lindale to relieve the Agent at that point on the morning of August 30th.

"Attention is also called to the fact that by reason of Phelps station having been transferred to Mr. Jones on August 29th, he assumed charge of that station at the end of the regular Agent's tour of duty on that date while Mr. Day, who was used to relieve the Agent-Telegrapher at Lindale, did not take charge of Lindale station until 1:00 P. M. on August 30th, or some 20 hours following the time that Mr. Jones was placed in charge of Phelps Station as Agent-Telegrapher.

"It is the contention of the Carrier that Rule III-(k) was fully complied with in this case and that there is nothing in that Rule which indicates that the senior employe should be used to fill a vacancy because it appears to be of longer duration or carries a higher rate of pay, but that the proper interpretation of the Rule is the one which has been used by the Carrier for a number of years; that is, to assign the senior available competent employes to vacancies as they occur, which was done in this case. To use any other method would result in many complications as well as time claims, as it is impossible to know just what vacancy will be of the longest duration at their beginning, especially when they are indefinite in their character."

OPINION OF BOARD: In support of their contention in this claim the General Committee of the Order of Railroad Telegraphers quote Rule 3, Paragraph (k) of the agreement between the parties, effective March 1, 1930, and submit that P. E. Jones, as senior available extra employe on the

Palestine Division of the Carrier, should have been assigned to a temporary vacancy occurring at Lindale, Texas, on August 30, 1935, instead of T. L. Day, a junior extra employe on the same seniority roster, who was assigned by the Carrier.

No question has arisen in this claim as to the seniority of Mr. Jones over that of Mr. Day, nor as to the application of the seniority rule. The Carrier submits however that notice was received from the Agent at Phelps and the Agent at Lindale that they desired to be relieved on August 30, 1935, and that the vacancy at Phelps took effect prior to the one at Lindale due to the fact that the vacancy at Phelps did not require a transfer while the one at Lindale did. The Carrier further contends that Telegrapher Jones began work at Phelps at 8 A. M. on August 30, while Telegrapher Day began work at 1 P. M. on the same date and that the telegraphers specified were used on the vacancies as they occurred in the order of their seniority and the assignments as made were proper.

According to the evidence submitted however the Agent at Lindale made a request to the Carrier on August 19 for a leave of absence beginning on the morning of August 30, 1935, and as Telegrapher Jones was the senior available extra employe on the Palestine Division he was entitled to the assignment, with the understanding that should another assignment develop in the interval he be given preference in the assignment because of his seniority standing, both as a matter of equity and in compliance with the requirements of the rule.

Under these conditions and the evidenced failure of the Carrier to comply with the terms of the Agreement between the parties, it is the opinion of the Board that Mr. Jones is entitled to reimbursement for such loss in wages as were actually sustained as a result of the assignment of the junior employe, but that as the assignment was a temporary one and such commissions as accrued during such assignment are not specified and were undoubtedly a matter of settlement between the Agents involved, that claim for commissions be waived.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the action of the Carrier in this case violated the terms of the current agreement between the parties.

AWARD

Claim sustained for actual wage loss shown to exist as a result of the improper assignment.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 5th day of October, 1937.